
(2014) 03 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 17435 of 2008

M/s. Sriram Rice Mills Pvt. Ltd. and Another

APPELLANT

Vs

The Andhra Pradesh State Finance Corporation and Others

RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

State Financial Corporations Act, 1951 — Section 29 39 39(1)

Citation : (2014) 3 ALD 554 : (2015) 2 ALT 388

Hon'ble Judges : A. Ramalingeswara Rao, J

Bench : Single Bench

Advocate : S. Arun Kumar, for the Appellant; S. Arun Kumar and Sri N. Vijay, for the Respondent

Judgement

A. Ramalingeswara Rao, J.—These two writ petitions are disposed of by a common order in view of the common issue involved in them.

W.P. No. 17435 of 2008:

The petitioner is a company incorporated under the provisions of Companies Act, 1956 and is a small scale industry carrying on the business of milling and manufacturing of parboiled rice and is situated in Nellore District. It applied to the second respondent in June 1998 seeking financial assistance by way of term loan of Rs. 50.25 lakhs for setting up of a 2T/HR capacity parboiled rice mill unit in their existing land and buildings situated at Survey Nos. 63 to 66, Panchedu Village, B.R. Palem Mandal, Nellore District. The first respondent sanctioned a loan of Rs. 50.25 lakhs on 08.08.1998 for the purpose of plant and machinery (Rs. 44.10 lakhs), contingencies @ 10% (Rs. 4.40 lakhs), erection (Rs. 0.55 lakhs) and pre-operative expenses (Rs. 1.20 lakhs). The tenure of the loan was five years and the amount has to be paid in 17 quarterly installments commencing after one year from the date of disbursement of any part of the loan. The said term loan was secured by way of equitable mortgage of land and buildings and hypothecation of plant and machinery, vehicles, miscellaneous

assets, existing and proposed in scheme and all future acquisitions of fixed assets in nature.

2. The petitioner company commenced its production in the month of February, 2001, but it became sick in the year 2002 and was unable to fulfill its obligation of repaying quarterly installments and interest to the second respondent. Even though the petitioner made a request for rescheduling the loan, the petitioner company was seized on 05.03.2004. In those circumstances, the petitioner made several representations to the Government and the Commissioner for Industrial Promotion, Industries and Commerce Department. The Commissioner issued a letter on 18.05.2004 directing the first respondent to consider the application for rescheduling the loan of the petitioner. The petitioner again represented to the first respondent and the first respondent in response to the request of the petitioner, rescheduled the loan on 25.07.2007 directing the petitioner to pay the principal outstanding amount of Rs. 47,95,995/- in 14 quarterly installments, commencing from 23.03.2008 and the outstanding interest amount of Rs. 65,68,212/- in 2 years in 22 monthly installments at the rates prescribed therein, but the seizure of the unit was not lifted.

3. The petitioner submitted several representations to the various authorities for lifting seizure of the company and the first respondent invoked its powers u/s 29 of the State Financial Corporations Act, 1951 (for short, SFC Act) and published a notice inviting tenders for the sale of the petitioner's unit on 14.03.2008. On 10.06.2008, the petitioner's company was sold in favour of the third respondent under a registered sale deed bearing No. 1654/2008. Challenging the same, the present writ petition was filed.

4. Respondents 1 and 2 filed a counter-affidavit stating that the term loan of Rs. 50.25 lakhs was sanctioned in favour of the petitioner and the petitioner availed an amount of Rs. 48.08 lakhs during 21.06.1999 to 31.01.2002 repayable in 14 installments. The petitioner company failed to implement the project within the stipulated time and thereby caused inordinate delay. The petitioner also failed to make arrangements for obtaining working capital well in time by 31.10.2002. The petitioner company fell in arrears for an amount of Rs. 37.34 lakhs and became a chronic defaulter. In those circumstances, the second respondent was constrained to initiate proceedings u/s 29 of the SFC Act for sale of hypothecated property and consequently a recall-cum-sale notice was issued on 02.12.2002 providing 15 days time for clearing the arrears of installments. When the petitioner failed to comply with the said notice, the respondents 1 and 2 were constrained to seize the unit on 21.01.2003. After seizure of the unit, the petitioner came forward to repay the loan amount and initially paid an amount of Rs. 2 lakhs and issued post-dated cheques for Rs. 9 lakhs with a further assurance that it would pay the entire outstanding amount within few days. Respondents 1 and 2 lifted the seizure on 25.01.2003. However, the petitioner failed to repay the outstanding loan amount and the post-dated cheques were dishonoured. Therefore, the unit was again seized on 20.03.2003, but as per the

decision taken at APSSIRS, the seizure was lifted on 27.03.2003 by accepting the post-dated cheques for Rs. 8.60 lakhs. But, the petitioner failed to honour the cheques and expressed its inability to pay the dues. Hence, the petitioner company was seized again on 05.03.2004. However, as per the advice of the Government of Andhra Pradesh, the seizure was lifted by accepting Rs. 1.00 lakh.

5. Later on, at the request of the petitioner, its loan account was rescheduled and extended the loan period by 7 years and funded interest due amount of Rs. 65.68 lakhs payable in 2 years in 22 monthly instalments commencing from 25.07.2007 was also considered. The cheques issued by the petitioner were dishonoured and the several reminders issued by the respondents 1 and 2 to repay the loan amount did not yield any result. In those circumstances, respondents 1 and 2 are left with no option, except to initiate action u/s 29 of the SFC Act and issue a recall-cum-sale notice dated 27.08.2007. The unit of the petitioner was again seized 07.11.2007 by following due procedure.

6. Thereafter, the assets of the petitioner company were advertised for sale in Andhra Jyothi daily newspaper on 14.03.2008. In response to the said advertisement, the third respondent offered highest amount for purchase of assets for Rs. 84.50 lakhs and the same was approved and time for payment of total consideration was granted till 10.09.208. The third respondent paid total consideration by way of cheques on 21.06.2008 and 23.06.2008 and both the cheques were encashed, sale was confirmed and the assets were handed over to the third respondent immediately. The petitioner, though was granted several opportunities, did not avail the same by paying the outstanding amounts. As per G.O.Ms. No. 203, dated 20.07.2006, the petitioner company, being a rice mill, is not eligible for revival under A.P. Small Scale Industries Revival Scheme.

7. An additional counter-affidavit was also filed by respondents 1 and 2 clarifying the position with regard to the process of offer while selling the unit. The additional counter states that while selling the unit, the internal guidelines would be followed by the first respondent. The offer could be kept open for a period of 90 days from the date of publication of the notification inviting tenders. The bid of a person who make satisfactory offer to purchase the asset is accepted irrespective of the fact whether 90 days time had elapsed or not. The period of 90 days does not confer any right either to the borrower or to any third parties and it is meant for only administrative and financial exigencies. The unit of the petitioner was valued as per the guidelines and procedure of the first respondent. Thereafter only, a public notification was published in Andhra Jyothi Telugu daily dated 14.03.2008 and tenders were invited. The procedure of the first respondent not waiting till completion of 90 days was assailed in another W.P. No. 25023 of 2006 before this Court and this Court vide order dated 08.08.2008 upheld the said procedure. The period of 90 days is an outer limit and in the instant case, the auction notice was issued on 14.03.2008 and the sale was finalised on 10.06.2008, since the offer was reasonable and the bid of the third respondent was accepted, there is no irregularity in conduct of auction. Further,

the Director General, Vigilance and Enforcement, Government of Andhra Pradesh, vide letter dated 07.08.2007 addressed to the Principal Secretary to the Government (I and C) Department, requested to direct the first respondent to initiate action against 8 firms and the petitioner firm is one among them.

8. The third respondent also filed a counter-affidavit stating that the petitioner filed W.P. No. 13487 of 2008 and he filed a counter therein and since no fresh cause of action accrued thereafter, the present writ petition is liable to be dismissed. It was stated that since the third respondent is in peaceful possession of the property purchased by him, invested huge amounts for reviving the unit by raising monies in a sum of Rs. 68 lakhs by mortgaging the unit with Union Bank of India, this writ petition is liable to be dismissed on that ground also. It is also stated that the petitioner also caused publication of news item in the newspapers stating that he was disentitled to run the unit, even though the unit was lawfully purchased by him. It is also stated that the sale affected by respondents 1 and 2 is valid and binding on the petitioner. He paid the entire sale consideration of Rs. 84.50 lakhs after borrowing huge money and nearly Rs. 20 lakhs was spent for bringing the unit into running condition. Possession of the unit was already handed over to the third respondent under a panchanama dated 24.06.2008.

9. The petitioner filed a reply affidavit stating that the rice mill is situated in an extent of land Acs. 3.17 cents and the constructed area is 2683 square meters consisting of AC sheet roof. Though the loan was rescheduled on 25.07.2007, he could not honour the terms of rescheduled loan, as the same were impossible of fulfillment. Normally, the tenders received during the period of 90 days would be opened and evaluated by the committee and if the committee finds a tender as viable, the same will be kept in the notice board for 7 days. Subsequent tenderers would have to quote their price with at least 15% enhancement over the open tender. Again negotiations will be held and the ultimate offers will be finalized. The said steps were mentioned in the sale notification issued by the first respondent. The third respondent submitted its bid on 08.04.2008 and it was put up for negotiations on 17.04.2008 and the same was approved by the Managing Director of the first respondent on 10.06.2008 and a letter to that effect was issued. The whole thing was concluded before the end of 90 days which is contrary to the terms of the sale notification. The procedure followed by the first respondent was contrary to the terms of sale notification and it was done to favour the third respondent. The value of the property fetches nearly Rs. 2 crores in the market and the value of machinery would fetch not less than Rs. 30 lakhs. The total value of the unit in any case would be at Rs. 2.50 crores and selling it in a hurried manner for a petty amount of Rs. 84 lakhs shows the arbitrariness on the part of the first respondent. If the unit was sold for a proper price, the first respondent would not have demanded the balance amount of Rs. 58 lakhs from the petitioner.

W.P. No. 15771 of 2010:

10. This writ petition was filed by the third respondent in the above writ petition challenging the action by the first respondent in issuing letter No. 432/SSI/A2/2009 dated 18.05.2010 issued on the purported recommendations of the Committee on Petitions, A.P. Legislative Council (for short, Committee). The further facts available from the affidavit filed by the petitioner are that after payment of amount of Rs. 84.50 lakhs by the petitioner (third respondent in the above writ petition) on 24.06.2008 and after making huge investment to revive the unit, respondents 1 and 2 were avoiding execution and registration of sale deed in his favour. In those circumstances, he filed W.P. No. 15670 of 2008 and the same was disposed of on 13.07.2008 with a direction to execute the sale deed in his favour within a period of one week from the date of that order, duly recording that the petitioner accepted the risk of success in W.P. No. 13487 of 2008 pending before this Court. Thereafter, a sale deed was executed on 01.08.2008.

11. The fourth respondent herein, who is the petitioner in W.P. No. 17435 of 2008, filed W.P. No. 13487 of 2008 challenging the action of respondents 1 and 2 in selling the unit to the petitioner and sought a consequential direction not to confirm the sale in favour of the petitioner and the same was dismissed on 01.07.2009 with a liberty to the fourth respondent to pursue the other writ petition No. 17435 of 2008 filed by him. Thereafter, the fourth respondent, by utilising his political clout, has approached the Committee and pursuant to the recommendations made by it, the Principal Secretary, Industries and Commerce Department, issued the impugned proceedings, directing the first respondent to file a suitable counter-affidavit in W.P. No. 15670 of 2008 and pray for cancellation of the sale deed dated 01.08.2008 registered in favour of the petitioner to enable them to re-convey the property to the fourth respondent as recommended by the Committee and accordingly obtain suitable directions from this Court. Challenging the same, this writ petition was filed.

12. Hereinafter, for convenience, the parties shall be referred to as they are arrayed in W.P. No. 17435 of 2008.

13. Respondents 1 and 2 filed a counter stating that during the pendency of W.P. No. 17435 of 2008, the petitioner filed a petition before the Committee seeking cancellation of the sale deed executed by the second respondent and to handover the unit to him. The Committee took up the said application and recommended for cancellation of the sale deed executed in favour of the third respondent and provide opportunity to the petitioner to pay back the amounts due to respondents 1 and 2. Accordingly, the Principal Secretary to Government of Andhra Pradesh, Industries and Commerce Department, Hyderabad addressed the impugned letter, while intimating the recommendations of the Committee. Since the Government directed the second respondent to file an additional affidavit, it was stated that they filed the same.

14. The petitioner (fourth respondent herein) also filed a counter-affidavit reiterating the averments made in the counter affidavit filed in support of W.P.

No. 17435 of 2008 stating that the third respondent has not come to the Court with clean hands and suppressed material information by not filing the requisite papers forming part of W.P. No. 17435 of 2008. The petitioner further stated that an application was filed before the Committee bringing the prejudicial conduct of the respondents 1 and 2 and the fraud that took place in disposing of the properties in favour of the third respondent. The Committee, after detailed enquiry into facts concluded that fraud took place in the disposal of the properties of the petitioner and accordingly directed the first respondent to get the sale cancelled from this Court by filing necessary reply and to re-convey the subject property in the name of the petitioner. It is further stated that the third respondent filed W.P. No. 15670 of 2008 for registration of the sale deed in his favour only and did not impale the petitioner as a party, though he is a necessary party. Another letter dated 27.07.2011 was issued by the Government after obtaining opinion from the Law Department for cancellation of the sale deed.

15. A reply affidavit was also filed by the third respondent stating that the petitioner was neither a proper nor necessary party to W.P. No. 15670 of 2008. He further stated that the proceedings conducted by the Committee as well as the orders passed by the Government were behind his back and are without jurisdiction. No notice was given to him by the Committee on its stand and the Government could not have invoked Section 39 of SFC Act. The directions are wholly without jurisdiction and by no stretch of imagination can be called directions on policy matter.

16. Respondents 1 and 2 also filed a counter-affidavit stating that the bid of the third respondent was accepted and upon payment of the total sale consideration, the petitioner unit was handed over to the third respondent. The petitioner filed W.P. No. 13487 of 2008 challenging the action of the respondents in selling the unit and for a consequential direction not to confirm sale by lifting the seizure of unit and handover the same to him. In those circumstances, respondents 1 and 2 could not execute the sale deed in respect of the property sold in favour of the petitioner. The third respondent filed W.P. No. 15670 of 2008 before this Court seeking a direction to respondents 1 and 2 to execute the register sale deed. In pursuance of the orders of this Court, a sale deed was executed in favour of the third respondent. When W.P. No. 17435 of 2008 filed by the petitioner was pending, the Principal Secretary to Government, Industries and Commerce Department wrote the impugned letter directing respondents 1 and 2 to take action as contained therein. The Board of Directors of respondents 1 and 2 in its 736th Board Meeting held on 06.07.2010 resolved to abide by this Court's directions in the writ petition filed by the borrower/purchaser after taking the following aspects into consideration.

(i) The Corporation sold the assets of the unit as per guidelines of the Corporation; and

(ii) The Corporation executed the sale deed in favour of the third respondent under directions of the High Court in W.P. No. 15670 of 2008.

17. Heard the learned counsel for petitioner, the learned Standing Counsel for respondents 1 and 2 and Sri C.V. Mohan Reddy, the learned Senior Counsel for third respondent.

18. The learned counsel for petitioner contended as follows:

(1) The tender notification was valid for a period of 90 days, but the bid of the third respondent was accepted before expiry of 90 days.

(2) The assessment of property of the petitioner was not properly valued, as the property of Rs. 1.50 crores was sold for an amount of Rs. 84.50 lakhs in favour of the third respondent and hence the sale was invalid.

(3) Respondents 1 and 2 cannot take any action either for recalling loan amount or for putting the unit for sale even before the loan became over due.

(4) As per the guidelines applicable to respondents 1 and 2 before finalisation of the bid, they should give an opportunity to the defaulter and no such opportunity was given and hence the sale in favour of the third respondent is invalid.

19. On the other hand, the learned Standing Counsel for respondents 1 and 2 submits that the petitioner is a chronic defaulter and in spite of several opportunities afforded to it, the outstanding loan amount was not liquidated. The cheques which were issued by the petitioner towards partial payment of the installments were bounced. The guidelines are intended for internal management of the Corporation and in view of the past conduct of the petitioner, it was held that no opportunity need be given to the petitioner before finalising the sale in favour of the third respondent. The learned Standing Counsel further submits that the period of 90 days mentioned in the tender notice is the outer limit and if a satisfactory bid is received by respondents 1 and 2, they can finalise the same and the petitioner being a chronic defaulter cannot challenge the said finalisation.

20. The learned Senior Counsel C.V. Mohan Reddy appearing for the third respondent contended that the Committee has no jurisdiction to intervene in a matter like this and the letter issued by the Government pursuant to the recommendations of the Committee is invalid, as the third respondent purchased the property in a properly held auction, paid total consideration and took possession of the unit. It is not open to the petitioner to challenge the auction, as it is a chronic defaulter. He relied on the decisions of the Hon'ble Supreme Court in Haryana Financial Corporation v. Jagdamba Oil Mills and Karnataka State Industrial Investment and Development Corpn. Ltd. v. Cavalet India Ltd. in support of his contentions.

21. There is no dispute with regard to the facts in the instant case. The petitioner unit was sanctioned a loan of Rs. 50.25 lakhs and an amount of Rs. 48.08 lakhs on hypothecation of land, plant and machinery was availed during 21.06.1999 to 31.01.2002 in 14 installments. By 31.10.2002, the petitioner company fell arrears an amount of Rs. 37.34 lakhs. The petitioner could not repay the installments and became a chronic defaulter and in those circumstances,

respondents 1 and 2 initiated proceedings u/s 29 of the SFC Act for sale of hypothecated property and consequently a recall-cum-sale notice was issued on 02.12.2002 giving 15 days notice. When the petitioner did not comply with the same, the unit was seized on 21.01.2003. Subsequently, when the petitioner paid an amount of Rs. 2 lakhs and issued post-dated cheques for Rs. 9 lakhs, the seizure was lifted on 25.01.2003. When the post-dated cheques got bounced and the petitioner failed to repay the loan installments, the unit was again seized on 20.03.2003. The seizure was again lifted on 27.03.2003 by accepting post-dated cheques for Rs. 8.60 lakhs. The cheques were again dishonoured and the unit was again seized on 05.03.2004 and the seizure was again lifted by accepting Rs. 1 lakh on the advice of the Government. The loan account of the petitioner was rescheduled on 25.07.2007, but the petitioner did not accept the terms of reschedule. When the petitioner again committed default, a recall-cum-sale notice was issued on 27.08.2007 and the unit of the petitioner was seized on 07.11.2007. The assets of the unit were advertised in Andhra Jyothi daily newspaper dated 14.03.2008 for sale. The third respondent became the highest bidder for Rs. 84.50 lakhs and time was granted to him for payment of the consideration till 10.09.2008. The total consideration amount was paid by the third respondent on 21.06.2008 and 23.06.2008 and the sale was confirmed and the unit was handed over to the third respondent.

22. The petitioner filed W.P. No. 13487 of 2008 and the same was dismissed on 08.07.2009 as infructuous giving liberty to the petitioner to raise all his contentions in W.P. No. 17435 of 2008. The petitioner filed an application before the Committee and the Committee made a recommendation to the Government. Accordingly the Government issued a letter No. 432/SSI/A2/2009, dated 18.05.2010, directing respondents 1 and 2 to file a suitable counter in these writ petitions for setting aside the sale. In the meanwhile, the third respondent filed W.P. No. 15670 of 2008 seeking a direction to respondents 1 and 2 to register a sale deed dated 25.06.2008 in his favour and the same was disposed of on 30.07.2008 directing respondents 1 and 2 to execute the sale deed within a week from that date.

23. Regarding the contention of the petitioner that the bid of the third respondent was accepted even before 90 days from 14.03.2008 on 10.06.2008, the condition of the tender notice has to be seen. An identical issue came up for consideration in W.P. Nos. 18080 of 2008 and 14816 of 2010 and this Court had an occasion to consider the same on 03.01.2014 and it was held as follows:

.... Regarding the contention of the learned Counsel for the petitioner that the unit was sold before the period of 90 days mentioned in the sale notice, the tender condition in the sale notice should be looked into and it reads as follows:

This notice will be valid for a period of 90 days from today. The satisfactory offers received within 90 days in respect of the above units can be confirmed. Thereafter, the tender forms for the said units will not be issued. The tenderers would be invited on every Monday or any day after 27.08.2007 for bidding/

negotiation, the other interested bidders can also participate in the bidding/negotiation by depositing the EMD along with the tender form.

A conjoint reading of the above conditions would make it clear that tenders would be received within a period of 90 days and satisfactory tender can be accepted even before the period of 90 days. Any other interested tenderer also can participate in bidding/negotiation process by depositing EMD. It means that the bidding process would be open for a period of 90 days and a challenge to such acceptance of the bid before the 90 days can be made only by another prospective bidder who intends to bid for a higher value. It is not open to the petitioner to challenge the acceptance of the bid amount within 90 days.

24. The proceedings of respondents 1 and 2 would indicate that two bids were received by them pursuant to the advertisement made on 14.03.2008 viz., one from the third respondent another from one S. Bhaskar Rao. As per the procedure, they were asked to revise the bid amount and they have increased the bid amount and the third respondent was found to be higher than that of another bidder and the Committee considered the offer reasonable and hence decided to submit the proposal to Managing Director for approval after placing on the notice board for seven days. The Committee also decided to reject the offer of other bidder S. Bhaskar Rao and returned EMD. The said decision was taken on 17.04.2008, but the Government issued a letter to respondents 1 and 2 on 04.06.2008 to take action for withdrawal of seizure/auction proposal in respect of 9 units of which the petitioner unit is one among them.

25. The learned counsel for petitioner stated that in fact the second bidder is a benami for the first bidder and the two bids were filed by the third respondent only and hence, the finalisation of a single tender is invalid. In support of his contention, he relied on the letter dated 10.03.2011 of respondents 1 and 2 addressed to the Principal Secretary to Government, Industries and Commerce Department, wherein respondents 1 and 2 requested the Government to take necessary action to get the sale cancelled and to arrange handover the assets of the unit to the petitioner. In the said letter, it was stated by respondents 1 and 2 that on receiving a complaint from the petitioner, the address given by the second tenderer was verified and noticed that it is the address of fifth partner of the third respondent and they were not having the information about the alleged benami transaction before approval of sale and hence the sale was approved in favour of the third respondent. The learned Counsel for the Petitioner could not show any rule or guideline stating that a single tender cannot be accepted by respondents 1 and 2, even assuming that the other tenderer is the benami of the third respondent. No averment was made by the petitioner in his pleadings showing his readiness and willingness to liquidate the loan amount at any time. The petitioner is a chronic defaulter and it is not open to him to challenge the tendering process followed by respondents 1 and 2 resulting in acceptance of the tender of the third respondent.

26. Regarding the contention of the petitioner that assets of the unit of Rs. 1.5

crores was sold for an amount of Rs. 84.50 lakhs, the learned Standing Counsel for respondents 1 and 2 drew the attention of this Court to the valuation certificate produced by the petitioner himself dated 18.12.2008. The said valuation certificate showed the land value as Rs. 18,41,040/- and the structures value as Rs. 49,55,730/- and the total market value as Rs. 67,96,770/-. The sale in favour of the third respondent fetched an amount of Rs. 84.50 lakhs. When faced with this situation, the learned counsel for petitioner stated that the same property was mortgaged by the third respondent in favour of a Bank for an amount of Rs. 4.7 crores and that itself shows the high value of the property.

27. The learned counsel for petitioner also stated that in view of the sale for a lesser value, respondents 1 and 2 did not realise the entire amount due from the petitioner and the petitioner is still being forced to pay the balance amount also. This Court noticed that the property was not sold for a song and the circumstances under which the third respondent subsequently mortgaged the property and took a loan for higher value cannot be investigated by this Court. It is a matter of record that the third respondent invested huge amounts for revival of the sick unit and made it workable and hence it cannot be held that the same property cannot be mortgaged for a higher value.

28. So far as contention of the petitioner that respondents 1 and 2 cannot demand the payment of entire outstanding amount even before the period of repayment of entire loan amount, the said submission is without any basis as the agreement of loan usually contains a clause enabling the financing company to recall the entire loan amount in case of default of installments even before the end of the loan period. The other contention of the Petitioner that the respondents 1 and 2 ought to have given an opportunity to the borrower before finalising the tender in favour of the third respondent as per their own guidelines dated 21.12.2001 is concerned, the guidelines are meant for indicating the procedure to be followed by the officers while putting the seized units under tender-cum-bid process. Guideline No. 9 on which reliance is placed by the learned counsel for petitioner reads as follows:

9. Once the sale proposal is accepted by the appropriate Committee, the original Promoters shall be intimated by the Concerned BM/GM(O)/CGM(O)/Asst. General Manager of AMC about the offer received from the highest tenderer/bidder for giving an opportunity with 15 days notice by offering the assets at the price offered by the highest tenderer/bidder on the same terms of down payment within the stipulated period as per norms.

29. The learned Standing Counsel for respondents 1 and 2 states that in view of the past conduct of the petitioner and the petitioner being a chronic defaulter, he was not issued any notice as contained in the said guidelines and the petitioner cannot have any grouse with regard to the same.

30. The learned Senior Counsel for the third respondent relied on Haryana Financial Corporation's case (1 supra) in which it was held as follows:

8. The guidelines were stated to be necessary to ensure fair play. That decision, as the factual position would go to show, was rendered in a case where the borrower intended to repay the debt and was anxious to do so. While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled hand and foot in the name of fairness.

9. In matters like the present one, fairness cannot be a one-way street. Corporations borrow money from the Government or other Financial Corporations and are required to pay interest thereon. Where the borrower has to genuine intention to repay and adopts pretexts and ploys to avoid payment, he cannot make the grievance that the Corporation was not acting fairly, even if requisite procedures have been followed.

31. In view of the said position, it is not open to the petitioner to contend that no opportunity was given to him. As already stated above, there was no pleading of the petitioner expressing his readiness to pay the outstanding loan amount.

32. The learned Senior Counsel for the third respondent also relied on Karnataka State Industrial Investment and Development Corpn. Ltd's. case (2 supra), wherein in para 19, the legal position with regard to the jurisdiction of this Court was summed up as follows:

19. From the aforesaid, the legal principles that emerge are:

(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the financial corporation and seek to correct them. The Doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.

(ii) In a matter between the corporation and its debtor, a writ court has no say except in two situations;

(a) there is a statutory violation on the part of the corporation or

(b) where the corporation acts unfairly i.e., unreasonably.

(iii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) Unless the action of the financial corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or businesslike it may be, for the decision of the financial corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the corporation, the same cannot be assailed for making the corporation liable.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adapted.

(vii) The financial corporation is always expected to try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action u/s 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the financial corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the financial corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price.

33. Thus, viewed from in any angle, the writ petition of the petitioner is liable to be dismissed. So far as the writ petition filed by the third respondent is concerned, this Court considered an identical issue in W.P. Nos. 18080 of 2008 and 14816 of 2010 dated 03.01.2014 and held as follows:

.... The other submission that the Government issued a communication to the Corporation for cancellation of the sale pursuant to the decision taken by the A.P. Legislative Council is concerned, as rightly contended by the learned Standing Counsel for respondent Nos. 1 to 3 and Counsel for respondent Nos. 4 to 9, the said decision cannot be a policy decision within the meaning of the Section 39(1) of SFC Act which reads as follows:

39. Power to give instructions to Financial Corporation on questions of policy:-
(1) In the discharge of its functions, the Board shall be guided by such instructions on questions of policy as may be given to it by the State Government [in consultation with [and after obtaining the advice of] the [Small Industries Bank]].

In order to call a decision as a policy decision, it must be applicable to a wider section of people and not in relation to a single individual or a unit. Further, as can be seen from the reading of the above provision, the decision should be in consultation with the Small Industries Development Bank of India. A decision at the instance of the A.P. Legislative Council by the Government cannot be termed as a policy decision within the meaning of the Section 39(1) of the Act. On this count also the submission of the learned Counsel for the petitioner cannot be appreciated.

34. The learned Standing Counsel for respondents 1 and 2 submitted that the Committee could not have issued a direction in relation to a pending case and

relied on an article titled "separation of powers and Legislative interference in pending cases" published in Sydney Law Review (Vol. 30:61). In our Indian Constitution also there is a clear separation of powers of Legislature and Judiciary and one body does not interfere in the jurisdiction of another as they are co-equal wings under the Constitution. In the present case, the Committee did not interfere with the decision making process of this Court but directed the Government to take the necessary action and the Government issued impugned proceedings further directing respondents 1 and 2 to file appropriate counter in the pending cases for setting aside the sale. As already held, the said direction of the Government is not binding on the respondents 1 and 2 as the direction does not relate to a policy decision.

35. In view of the procedural fairness followed by respondents 1 and 2 and taking over all facts and circumstances of the case, the sale in favour of the third respondent cannot be held to be invalid and consequently the impugned proceedings of the Government have to be set aside as no consequence. Even on equities also, the third respondent has been in possession of the property since June, 2008 and invested huge amounts and has been running the unit. The petitioner could not succeed in his attempt to invalidate the sale in favour of the third respondent. Accordingly, W.P. No. 15771 of 2010 is allowed and W.P. No. 17435 of 2008 is dismissed. No order as to costs. Miscellaneous Petitions pending, if any in these writ petitions, shall stand closed.